IN THE HIGH COURT OF UTTARANCHAL / UTTARAKHAND AT NAINITAL

Writ Petition No. 62 (SS) of 2007

Govind Ram Naithani,
Son of Sri B.D. Naithani,
R/ o 285, Gandhi Nagar,
Roorkee, Hardwar. **……..Petitioner.**

Versus

1. State of Uttaranchal through its Secretary, Food and Civil Supplies Department, Civil Secretariat, Dehradun.
2. Commissioner, Food and Civil Supplies Department, Civil Secretariat, Dehradun.
3. Secretary Reorganisation Committee, Civil Secretariat, Dehradun, Uttaranchal.
4. State of U.P. through its Secretary, Food and Civil Supplies Department, Civil Secretariat, Lucknow.
5. Secretary Reorganisation Committee, Civil Secretariat, Lucknow, U.P.
6. Union of India through its Secretary, Ministry of Food and Civil Supplies New Delhi.

……Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri Pankaj Miglani, learned counsel for the petitioner, Sri Paresh Tripathi, learned Brief Holder for State of Uttaranchal / Uttarakhand on behalf of respondents no. 1 to 3, learned Standing Counsel for State of U.P. on behalf of respondent no. 4 and 5 and learned standing counsel for Union of India on behalf of respondent no. 6.

By means of this writ petition, the petitioner has prayed for the following reliefs:

1. to summon the complete record pertaining to the case.

2. *to issue a writ, order or direction in the nature of Certiorari quashing the impugned orders dated 16.01.2007 contained in Annexure No. 6 to the present writ petition whereby the petitioner has been relieved for State of U.P.*

3. *to issue the writ, order or direction in the nature of Mandamus direction respondents authorities to consider revision of allocation of the petitioner on the basis of mutual transfer.*

4. *to issue any other suitable order or direction, as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*

5. *to award the costs of the petition to the petitioner.*

On 24.01.2007, time was granted to learned standing counsel to file counter affidavit but till date no counter affidavit has been filed.

Petitioner, who is working as marketing Inspector, in the Food and Civil Supplies Department, is permanent resident of State of Uttaranchal / Uttarakhand and at the time of creation State of Uttaranchal (now State of Uttarakhand) he was working in the hill districts of State of U.P. Even after creation of State of Uttaranchal, petitioner is continuously working in the State of Uttaranchal.

The case of the petitioner is that petitioner had opted for State of Uttaranchal (Now State of Uttarakhand), however, Department of Personnel, Public Grievance and Pension, Union of India has not allotted Stated of Uttaranchal to the petitioner.

The decision of Department of Personnel, Public Grievance and Pension, Union of India, is against the policy

declared by the Department for allocation of State to the employees as per Annexure nos. 1 and 2 to the writ petition.

Learned counsel for the petitioner has submitted that petitioner is entitled for allotment of State of Uttaranchal (now State of Uttarakhand) and posts of Marketing Inspector in Food and Civil Supplies Department are vacant.

By the impugned order dated 16.01.2007 passed by Commissioner, Food and Civil Supplies Department, Dehradun, petitioner has been directed to be relieved for State of U.P.

Learned counsel for the petitioner has relied on the judgment passed by Division Bench of this court in the case of Dr. I.P.Sharma Vs. State of Uttaranchal reported in 2006 (1) UC 324 wherein the court has held that petitioners should be given opportunity to make representation to the authority concerned and till then they should be allowed to continue in service in Government of Uttaranchal. In this case petitioners were officiating Deputy Directors in Ayurveda and Unani Department of Government of Uttaranchal. They had opted for State of Uttaranchal but in the Final Allocation List their names did not find place for State of Uttaranchal. First petitioner was going to be retired 28.02.2006 and another petitioner was going to be retired on 31.08.2007.

In the present case, learned counsel for the petitioner has submitted that petitioner is going to be retired in the next year. However, counsel for the petitioner is neither aware the date of retirement of petitioner nor he has mentioned in the writ petition.

Since the petitioner is permanent resident of State of Uttaranchal (now State of Uttarakhand) and he was working in the hill districts of State of U.P. prior to creation of State of Uttaranchal. The petitioner has opted for State of Uttaranchal and Department of Food and Civil Supplies, Dehradun has also recommended the name of the petitioner for allotment to State of Uttaranchal, in spite of these facts, petitioner has been finally allocated to State of U.P.

In the circumstances stated above, I deem it fit and proper to direct petitioner to make fresh representation to the competent authority against his allotment to State of U.P. within a period of ten days from today and it is expected from the authority concerned (Secretary, Department of Personnel, Public Grievance and Pension, Union of India) that he shall decide the representation of the petitioner within a period of three weeks from the date of receipt of representation from the petitioner in this regard. Till 20.03.2007 or till the decision is taken by the authority concerned on the petitioner's representation, whichever is earlier, petitioner should be allowed to continue in service in the Government of Uttaranchal / Uttarakhand.

With this direction the writ petition is finally disposed of. No order as to costs. Civil Misc. application no. nil of 2007 is disposed of accordingly.

(M.M. Ghildiyal, J)

February 12, 2007
SKSharma